

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JAMES EDWARD DOUGHERTY, III,  
and MICHELLE A. DOUGHERTY, his  
wife  
1466 Day Hollow Road  
Owego, NY 13827**

Plaintiffs,

v.

**A.O SMITH WATER PRODUCTS  
COMPANY**

11270 West Park Place  
Milwaukee, WI 53224

**ABB, INC.**

c/o CT Corporation System  
160 Mine Lake Ct, Suite 200  
Raleigh, NC 27615

**ALFA LAVAL INC.**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**AIR & LIQUID SYSTEMS  
CORPORATION, successor-by-merger to  
Buffalo Pumps, Inc.**

c/o Corporation Service Company  
2595 Interstate Drive Suite 103  
Harrisburg, PA 17110

**AMETEK, INC., individually and as  
successor to Schutte & Koerting**

c/o Corporation Service Company  
80 State Street  
Albany, NY 12207-2543

**AMTROL, INC., Individually and as  
successor to Thrush Products, Inc.**

c/o CT Corporation System  
450 Veterans Memorial Parkway, Suite 7A  
East Providence, RI 02914

Civil Action No. 22-3204

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**ARMSTRONG INTERNATIONAL, INC.**

900 Maple Street  
Three Rivers, MI 49093

**AURORA PUMP COMPANY**

c/o SPX Corporation  
6325 Ardrey Kell Road  
Charlotte, NC 28277

**BLACKMER**

1809 Century Avenue SW  
Grand Rapids, MI 49503

**BW/IP, INC. and  
Its Wholly-Owned Subsidiaries**

5215 North O'Connor Blvd,  
Suite 2300 Irving, TX 75039

**CARRIER CORPORATION**

c/o United Agent Group Inc.  
1001 State Street, #1400  
Erie, PA 16501

**CLEAVER-BROOKS, INC.**

c/o Corporation Service Company  
251 Little Falls Drive  
Wilmington, DE 19808

**CROSBY VALVE, LLC**

c/o CT Corporation System  
155 Federal St. Suite 700  
Boston, MA 02110

**DCO, LLC, f/k/a Dana Companies,  
Individually and successor-in-interest to  
Victor Gasket Manufacturing Company  
and Spicer Parts**

c/o CT Corporation System  
4701 Cox Rd., Suite 285  
Glen Allen, VA 23060

**EATON CORPORATION,**  
**as successor-in-interest to Eaton Electrical,**  
**Inc., Cutler-Hammer, Inc., and**  
**the Wright-Austin Company**  
c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**ELECTROLUX HOME PRODUCTS,**  
**INC., as successor-in-interest to Copes-**  
**Vulcan**  
c/o CT Corporation System  
28 Liberty Street  
New York, NY 10005

**ELLIOTT COMPANY**  
c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**FEDERAL MOGUL ASBESTOS**  
**PERSONAL INJURY TRUST,**  
**as Successor to Felt Products**  
**Manufacturing Co.**  
c/o Wilmington Trust SP Services, Inc.  
1105 N. Market Street,  
Suite 1300 Wilmington, DE 19801

**FIVES GIDDINGS & LEWIS, LLC**  
c/o CT Corporation System  
301 S Bedford Street,  
Suite 1 Madison, WI 53703

**FLOWSERVE U.S., INC.,**  
**solely as successor to Rockwell**  
**Manufacturing Company,**  
**Edward Valves, Inc.,**  
**Nordstrom Valves, Inc.,**  
**and Edward Vogt Valve Company**  
c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**FLOWERVE U.S., INC. F/K/A THE  
DURIRON COMPANY, INC.**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**FMC CORPORATION,  
on behalf of its former  
Chicago Pump, Peerless Pump  
and Northern Pump Businesses**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 1.7101

**FOSTER WHEELER, LLC  
Survivor to a merger with Foster Wheeler  
Corporation**

c/o United Agent Group, Inc.  
3411 Silverside Road, #104 Tatnall  
Building  
Wilmington, DE 19810

**GARDNER DENVER, INC.**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**GENERAL DYNAMICS CORPORATION**

c/o The Corporation Trust Company  
1209 Orange Street  
Wilmington, DE 19801

**GENERAL ELECTRIC COMPANY**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**GOULD ELECTRONICS, INC.**

c/o CT Corporation System  
3800 N Central Avenue, Suite 460  
Phoenix, AZ 85012

**GOULDS PUMPS LLC**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**GRINNELL, LLC**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**HENRY TECHNOLOGIES, INC., f/k/a  
Henry Valve Company**

c/o Illinois Corporation Service Company  
801 Adlai Stevenson Drive  
Springfield, IL 62703

**HONEYWELL INTERNATIONAL, INC.,  
f/k/a AlliedSignal, Inc., as successor-in-  
interest to The Bendix Corporation,  
Cincinnati Milling Machine Company, and  
Warner & Swasey Company**

c/o Corporation Service Company  
2595 Interstate Drive, Suite 103  
Harrisburg, PA 17110

**IMO INDUSTRIES, INC.**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**ITT LLC f/k/a ITT Corp.,  
Bell & Gossett Co., Foster Engineering,  
Kennedy Valve Mfg. Co., Inc.,  
Lawler Automatic Controls, Inc.,  
and Hoffman Specialty Manufacturing Co.**

c/o CT Corporation System  
28 Liberty Street  
New York, NY 10005

**LEBLOND LTD.**

c/o Calfee, Halter & Griswold LLP  
Attn: Jennifer L. Whitt  
1405 East 6th Street  
Cleveland, OH 44114

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**METROPOLITAN LIFE INSURANCE  
COMPANY**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**PAR SYSTEMS, LLC**

c/o National Registered Agents, Inc.  
1010 Dale St. N.  
St. Paul, MN 55117

**PARAMOUNT GLOBAL, f/k/a  
ViacomCBS Inc., f/k/a CBS Corporation,  
a Delaware corporation, f/k/a/ Viacom Inc.,  
successor by merger to CBS Corporation,  
a Pennsylvania corporation, f/k/a  
Westinghouse Electric Corporation**

c/o Corporation Service Company  
2595 Interstate Drive, Suite 103  
Harrisburg, PA 17110

**REDCO CORPORATION formerly  
known as Crane Co.**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**ROBERTSHAW CONTROLS  
COMPANY**

c/o Registered Agent Solutions Inc.  
838 Walker Road, Suite 21-2  
Dover, DE 19904

**SPIRAX SARCO, INC.**

c/o CT Corporation System  
600 North 2nd Street, Suite 401  
Harrisburg, PA 17101

**TACO, INC.**

c/o Corporation Service Company  
222 Jefferson Boulevard, Suite 200  
Warwick, RI 02888

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**THE GOODYEAR TIRE & RUBBER  
COMPANY**

c/o Corporation Service Company  
80 State Street  
Albany, NY 12207

**THE J.R. CLARKSON COMPANY,  
successor by merger to Kunkle Industries,  
Inc., and J.E. Lonergan Company**

c/o CT Corporation System  
701 S Carson Street, Suite 200  
Carson City, NV 89701

**THE NASH ENGINEERING COMPANY**

c/o CT Corporation System  
Goodwin Square, 225 Asylum Street,  
20<sup>th</sup> Floor  
Hartford, CT 06103

**VALVES AND CONTROLS US, INC.,  
f/k/a Weir Valves & Controls USA, Inc.,  
f/k/a Atwood & Morrill Co., Inc.**

c/o CT Corporation System  
28 Liberty Street  
New York, NY 10005

**VELAN VALVE CORPORATION**

94 Avenue C  
Williston, VT 05495

**WARREN PUMPS LLC**

c/o CT Corporation System  
1209 Orange Street  
Wilmington, DE 19801

**WATTS REGULATOR CO.**

c/o CT Corporation System  
155 Federal Street, Suite 700  
Boston, MA 02110

**WATTS WATER TECHNOLOGIES,  
INC.**

c/o CT Corporation System  
155 Federal Street, Suite 700  
Boston, MA 02110

**YORK INTERNATIONAL  
CORPORATION**

c/o CT Corporation System  
301 S. Bedford Street, Suite 1  
Madison, WI 53703

**ZURN INDUSTRIES, LLC**

c/o CT Corporation Systems  
28 Liberty Street  
New York, NY 10005,

Defendants.

**DEFENDANT AMETEK, INC.'S NOTICE OF REMOVAL OF ACTION UNDER  
28 U.S.C. § 1442(A) (FEDERAL OFFICER)**

TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF  
RECORD:

PLEASE TAKE NOTICE that Defendant AMETEK, Inc., incorrectly named as  
“AMETEK, INC., individually and as successor to Schutte & Koerting” (“AMETEK”)<sup>1</sup> hereby  
gives notice of the removal of the above-entitled action from the Court of Common Pleas of  
Philadelphia County, First Judicial District of Pennsylvania to the United States District Court  
for the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1442(a). In support, AMETEK  
offers the following:

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<sup>1</sup> AMETEK is incorrectly named in the Complaint as “AMETEK, Inc., Individually and as successor-in-interest to Schutte & Koerting.” Without waiving any successor liability arguments, AMETEK avers that Schutte & Koerting products were designed pursuant to military specifications for use in naval applications.



## I. BACKGROUND

1. On or about June 27, 2022, Plaintiffs James Dougherty (“Mr. Dougherty”) and Michelle Dougherty (“Mrs. Dougherty”) (collectively, “Plaintiffs”) commenced an action in the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania entitled *James Dougherty, III and Michelle Dougherty v. A.O. Smith Water Products Company, et. al.*, No. 220602483. See Complaint, attached as **Exhibit A**.

2. On July 12, 2022, AMETEK was served with a copy of the Complaint. *Id.*

3. Plaintiffs incorrectly named AMETEK in the Complaint as “AMETEK, INC., individually and as successor to Schutte & Koerting” (“AMETEK”). *Id.*

4. The Complaint alleges that Mr. Dougherty was exposed to asbestos-containing products throughout his work history, which includes military service and civilian employment:

- a. United States Navy, USS Voorhis – fireman and boiler technician (1964-1966);
- b. Trane Company, Dunmore, PA – assembly man and press operator (1966-1993);
- c. Schott North America, Inc. Duryea, PA – Retrieved products from the batch room and then placed products into high heat furnaces and then remove them from the furnaces (1994 - 1997);

See **Exhibit A**, ¶ 4.

5. The Complaint further alleges that Mr. Dougherty contracted mesothelioma as a result of his exposure to asbestos-containing products. See **Exhibit A**, ¶¶ 4.

6. Plaintiffs allege that as a fireman and boiler technician aboard the USS Voorhis, Mr. Dougherty “maintained, inspected, repaired, and stood watch over the ship’s boilers. He also performed and/or was present and in close proximity while others performed the following work on the above-mentioned defendants’ [AMETEK] products: repairing, removing, and replacing asbestos- containing pumps, valves, steam traps, compressors, turbines, evaporators, deaerating tanks, air conditioning, and refrigeration plants, generators, and motors. He also performed

and/or was present and in close proximity while others performed the following work on the above-mentioned defendants' [AMETEK] products: installing and removing asbestos-containing pipe insulation, gaskets, and packing. The above mentioned products created visible asbestos-containing dust in the air that he inhaled." *Id.*

## **II. APPLICABLE LEGAL STANDARD**

7. AMETEK's Notice of Removal is timely in that it is filed within thirty (30) days of receipt, through service, of the Complaint by which AMETEK received its first notice of the facts indicating that the case was removable within the meaning of 28 U.S.C. §1446(b).

8. Removal to the United States District Court for Eastern District of Pennsylvania is proper under 28 U.S.C. § 1441(a) because Plaintiffs initiated the State Court Action in the Court of Common Pleas of Philadelphia, which is located within the jurisdiction of this District.

9. Removal is proper under 28 U.S.C. § 1442(a)(1), the federal officer removal statute, when the party seeking removal alleges facts demonstrating that:

- (1) the defendant is a 'person' under the statute;
- (2) there is a causal nexus between the plaintiffs' claims and the defendant's actions under federal direction;  
and
- (3) the defendant has raised a colorable defense based upon federal law.

See Jefferson County v. Acker, 527 U.S. 423, 431 (1999); Mesa v. California, 489 U.S. 121, 124-25, 131-35 (1989); Hurley v. CBS Corp., 648 Fed. Appx. 299, Prod. Liab. Rep. (CCH) P 19844 (4th Cir. 2016) (applying Maryland law); see also Hagen v. Benjamin Foster Co., 739 F.3d 770, 776 (E.D.Pa. 2014) (citing Feidt v. Owens Corning Fiberglas Corp., 153 F.3d 124, 127 (3d Cir. 1998)).

10. As stated more fully below, AMETEK satisfies all three (3) jurisdictional requirements, and, therefore, is entitled to remove this action pursuant to the federal officer removal statute.

**III. FEDERAL OFFICER REMOVAL IS APPROPRIATE UNDER 28 U.S.C. § 1442(A)**

11. AMETEK is a “person” within the meaning of 28 U.S.C. § 1442(a). See Watson v. Philip Morris Cos., 551 U.S. 142, 153-54 (2007); Isaacson v. Dow Chemical Co., 517 F.3d 129, 135-36 (2d Cir. 2008) (corporate entities qualify as “persons” under § 1442(a)(1)).

12. AMETEK was, at the time of the commencement of the State Court Action and at all times thereafter, through and including the time of removal, a Delaware corporation.

13. AMETEK raises a colorable federal defense, namely, the government contractor defense, to Plaintiffs’ claims. As set forth by the Supreme Court of the United States in Boyle v. United Technologies Corp., 487 U.S. 500, 512 (1988), the government contractor defense applies when:

- (1) the United States approved reasonably precise specifications;
- (2) the equipment conformed to those specifications; and
- (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States.

See Hagen, 739 F.3d at 776; Feidt, 153 F.3d 124, 127. “While the Court must require that the facts identified by Defendant [AMETEK] support the federal defense, the Court is not called upon at this preliminary stage to pierce the pleadings or dissect the facts stated. Nor is it the Court’s function at this stage to determine credibility, weigh the quantum of evidence or discredit the source of the defense.” Hagen, 739 F.3d at 783.

14. Federal officer removal should be interpreted broadly. See Sun Buick, Inc. v. Saab Cars USA, Inc., 26 F.3d 1259, 1261 (3d Cir. 1994); In re Asbestos Products Liability Litigation (No. VI), 770 F.Supp.2d 736, 742 (E.D.Pa. 2011); see also Hagen, 739 F.Supp.2d 770 (Robreno, J.) (holding that the record supporting removal should be viewed in the light most favorable to the removing defendant). “[T]he right of removal is absolute for conduct performed under color of federal office” and “should not be frustrated by a narrow, grudging interpretation of § 1442(a)(1).” Arizona v. Manypenny, 451 U.S. 232, 242 (1981).

15. Plaintiffs base their claims against AMETEK, in whole or in part, on Mr. Dougherty’s alleged exposure to asbestos while working as a fireman and boiler technician in the U.S. Navy, aboard the Naval vessel USS Voorhis from 1964 to 1966. Plaintiffs allege that while aboard these Naval vessels Mr. Dougherty was exposed to asbestos while working on or around equipment manufactured by AMETEK for and to the U.S. Navy.

16. Plaintiffs’ claims against AMETEK depend, in whole or in part, on the actions taken by Schutte & Koerting in accordance and compliance with Navy specifications.

17. Schutte & Koerting was acting under the direction of the Navy within the meaning of 28 U.S.C. § 1442(a)(1) in the design and manufacture of its equipment for and to the Navy. Schutte & Koerting equipment at issue in this case was designed and manufactured pursuant to precise contracts and specifications approved by the Navy.

18. The Navy has, since the 1950’s, issued Military Specifications (hereinafter “MILSPECS”) for various equipment of the types manufactured by Schutte & Koerting. Moreover, compliance with the specifications for equipment to be used on Navy ships was directly monitored by Naval Machinery Inspectors. Unless Schutte & Koerting equipment was first determined to be in conformity with all applicable Navy specifications, it could not be

installed aboard Navy ships. Thus, Schutte & Koerting was acting under the direction of the Navy within the meaning of 28 U.S.C. § 1442(a)(1).

19. Pursuant to the government contractor defense, AMETEK cannot be liable for a negligent failure to warn of the dangers of asbestos under state law for any injuries caused by Schutte & Koerting equipment aboard a Navy vessel. The Navy provided Schutte & Koerting with precise specifications regarding its equipment, and Schutte & Koerting delivered equipment in precise conformity therewith. Based on the above, AMETEK has made a colorable showing on each prong of the government contractor defense, and therefore, is entitled to immunity from Plaintiffs' claims, either in whole or in part.

20. Given the Navy's direct and detailed control over the design and manufacture of Schutte & Koerting equipment, as detailed in paragraphs 16, 17, and 18 above, there exists a sufficient causal nexus between Plaintiffs' claims and Schutte & Koerting's actions. See Hagen, 739 F.Supp.2d 770, 785 ("[T]he necessary casual connection exists because the liability Defendants face arises from their official duties, performed in accordance with a valid government contract."). See also Willingham v. Morgan, 395 U.S. 402, 409 (1969).

21. A casual nexus exists here because the very act that forms the basis of plaintiffs' claims—[Schutte & Koerting's] failure to warn about asbestos hazards—is an act that [AMETEK] contends it performed under the direction of the Navy. Winters v. Diamond Shamrock Co., 149 F.3d 387, 400 (5th Cir. 1998) (finding the causal nexus test satisfied when the government: (1) provided the specifications for product composition, (2) compelled the defendant's manufacture of the product; and (3) supervised the defendant's actions).

22. AMETEK is not required to obtain the consent of any other defendants in this action in order to remove this action in its entirety under 28 U.S.C. § 1442(a)(1). See Ely Valley Mines, Inc. v. Hartford Acc. & Indem. Co., 644 F.2d 1310, 1314 (9th Cir. 1981).

23. As required by 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon AMETEK are being filed herewith.

24. A Notice of Filing of Notice of Removal, along with a copy of this Notice of Removal, will be duly provided to the Clerk of the Court of Common Pleas of Philadelphia County for filing with the state court action and will be served upon all counsel of record.

25. AMETEK hereby requests a full and fair opportunity to brief, respond to, and argue against any motion for remand filed by Plaintiff.

WHEREFORE, Defendant AMETEK, INC. requests that this Honorable Court assume jurisdiction over this matter on removal from the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania.

Respectfully submitted,  
AMETEK, Inc.,  
By its counsel,

s/ Albert L. Piccerilli  
Albert L. Piccerilli  
Montgomery McCracken  
Walker & Rhoads LLP  
1735 Market Street  
Philadelphia, PA 19103  
(215) 772-1500  
[apiccerilli@mmwr.com](mailto:apiccerilli@mmwr.com)

Dated: August 11, 2022